IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4661 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SANJAYKUMAR @ GENDI LAXMANBHAIPATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4661 of 2002

MR AR SHAIKH for Petitioner No. 1

MR KOGJE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 18/06/2002

ORAL JUDGEMENT

1. Heard ld. counsel Ms. Banna Datta for Mr. A.R.Shaikh, ld. counsel for the petitioner and ld. AGP Mr. Kogje for the respondents.

2. In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order dated 27.12.2001 passed by the District Magistrate, Mehsana in exercise of the powers conferred on him by Section 3(2) of the Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act). The petitioner has been branded as "dangerous person" and chronic "bootlegger" within the meaning of the Act.

3. Ld. counsel Ms. Datta has taken this Court through entire set of facts available on record and has pointed out that date of last alleged offence registered against the petitioner viz. CR.I. No. 296/2001 for the offences punishable under Sections 324,325, 323 of IPC is registered on 14.8.2001 and the impugned order of detention has been passed on 27.12.2001 against the petitioner branding him as "bootlegger" and "dangerous person" within the meaning of the provisions of the PASA Act. Mr. Kogje, ld. AGP has tried to point out that the order of detention should not be quashed on the ground of delay in passing the order as statements of the witnesses were recorded on 1.11.2001 and the same were verified on 24.12.2001 and immediately within three/ four days, the order of detention has been passed.

4.(i) The petitioner has produced all relevant documents to point out that the subjective satisfaction recorded by the detaining authority is not based on any cogent material or cogent reasons. In absence of supporting documents impugned order of detention could not have been passed and it is rightly submitted that some more documents viz. panchanama of the damaged part of the jeep car, injury certificate of the injured who had allegedly sustained injury by means of hockey stick on the right palm, could have been obtained by the sponsoring machinery and should have been placed before the detaining authority, which has not been done. Ld. counsel for the petitioner has mainly hammered on the point that there was no evidence or document before the detaining authority on the basis of which it can be reasonably inferred that the present petitioner is either a dangerous person or is a chronic bootlegger.

(ii) Privilege claimed under sec. 9(2) of the PASA Act in reference to one witness by the authority is also not well-founded.

(iii) Registration of one offence in the facts circumstances cannot be held to be sufficient for detaining such a person. In the present case, though

three different types of cases are registered against the petitioner, but on close scrutiny of the documents, it transpires that subjective satisfaction recorded by the detaining authority is an afterthought at a belated stage.

5. Of course, this Court has very limited scope to go into the merits of legality of subjective satisfaction recorded and the method adopted, but this Court is satisfied that element of apprehension as to the activities of the petitioner prejudicial to the maintenance of public order is not found reasonable. Hence, the order of detention cannot be allowed to sustain.

6.(i) In the present case, the first offence registered against the petitioner has been registered on 12.6.2001 at 18.30 hours with Visnagar Police Station being I.CR No. 230/2001 for the offences punishable under Sections 366, 379, 506(2) of IPC. In the FIR, total six persons are shown as accused and the present petitioner is not named in the FIR. When the complaint expresses the grievance that the accused persons named in the FIR have abducted his sister along with some gold and silver ornaments etc., however after investigation, chargesheet filed by the I.O. on 13.9.2001 discloses the offences punishable under Sections 380, 114 of IPC. Of course, all the papers served to the detenu with grounds for detention are available to this Court, but in the copy of said chargesheet, only three persons are named and shown as accused. Four accused named in FIR seems to have been dropped by the investigating agency and present petitioner is arraigned as one of the accused. The charge of offence punishable u/s. 366 is also dropped. So, it can be reasonably inferred that first complaint was filed after the lapse of around 18 days at a belated stage on account of some family complications.

(ii) The second offence against the present petitioner has been registered on 26.7.2001 being Prohibition CR No. 293/2001 with Visnagar Police Station for the offences punishable under Sections 66B, 65AE, 81, 116B of the Bombay Prohibition Act. One Brahmin Pravin Chandrakant is shown as co-accused in the FIR. None of the counsels are clear on the question whether said co-accused Brahmin Pravin was detained by the detaining authority because of this offence or not. Plain reading of the complaint clearly indicates that liquor worth Rs. 59,200/ as estimated by the police was recovered, but none of the accused were physically present when liquor bottles were recovered and on information. Two accused are named as

accused in the FIR including present detenu.

(iii) The third complaint registered with Visnagar Police Station is the case of quarrel between two groups which had taken place on 14.8.2001 being I.CR No.296/2001 for the offences punishable under Sections 324, 325, 323 of IPC.

7. On close scrutiny of all the documents including injury certificate produced and supplied to the detenu, this Court is of the view that this is a case concerned with law and order situation and does not fall within the compass of "public order". Detaining authority is obliged to record positive finding based on the facts available on record objectively that the accused/detenu is acting in a manner which can be said to be prejudicial to the maintenance of "public order". Establishment of availability of such facts is sine qua non. Degree of disturbance or its impact has relevance. It can be said that activities of the accused are found something more than disturbing the "law & order" situation, but cannot be said to be prejudicial to maintenance of "public order". This Court is satisfied that this is a case wherein the petitioner could not have been detained by the detaining authority on the ground that he is a "dangerous person" or a chronic "bootlegger" having ability to disturb "public order".

8. On the ground of delay in passing the order of detention as well as delay in dealing with and disposing of the representation and communication thereof to the detenu, this Court is not called upon to pass any comments as ld. counsel Ms. Datta for the petitioner has stated that she does not invite any formal discussion or finding and, therefore, this Court is not inclined to express any opinion on this ground.

9. For the reasons aforesaid, petition is allowed. Impugned order of detention dated 27.12.2001 passed by the District Magistrate, Mehsana is hereby quashed and set aside. Detenu Sanjaykumar @ Gendi Laxmanbhai Patel is hereby ordered to be set at liberty forthwith if not required to be detained in connection with any other case. Rule is made absolute.
Direct Service is permitted.

18.6.2002 [C.K. BUCH, J]
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